

Disputes Resolution Authority

An Córas Eadrána

DRA 09/10/11 of 2020: In the matter of an arbitration under the Disputes Resolution Code and the Arbitration Act 2010

Between:

MICHAEL POWER / SEAN POWER / JAMES POWER

Claimants

v.

COISTE CEANNAIS NA GCOMORTAISÍ CILL CHAINNIGH - (KILKENNY CCC)

First Named Respondent

And

COISTE ÉISTEACHTA CILL CHAINNIGH - (KILKENNY HC)

Second Named Respondent

And

COISTE ÉISTEACHTA LAIGHEAN - (LEINSTER HC)

Third Named Respondent

Hearing: 6th August 2020, Green Isle Hotel, St John's Dr, Newlands Cross, Dublin 22

Tribunal: Mr. Aaron Shearer BL, Mr. Geraldine Fitzpatrick BL, Mr Páraic Duffy

Secretary to the DRA, Rory Hanniffy BL

VERDICT: The claim succeeds.

KEYWORDS:

LIST OF ATTENDEES:

Claimants

Michael Power
Sean Power
James Power
Mick Power
John Power
Catherine Power

First Respondent – Kilkenny CCC

PJ Kenny

Second Respondent – Kilkenny Hearings Committee

Eamonn Doyle
Conor Denieffe – County Secretary

Third Respondent - Leinster Hearings Committee

Margaret Doyle
Eamon Cusack

FACTUAL BACKGROUND

1. This is a matter in respect of which there is a long and rancorous history. Suffice it to say, in respect of much of the background to the case, that it was accepted by all parties that there was little appetite on the behalf of the Claimants to continue to be members of the John Lockes club and little appetite from the John Lockes Club that the Claimants would continue to be members of it.
2. Applications to transfer from The John Lockes Club to Windgap GAA Club were submitted by the three Claimants before the transfer application deadline of February 15th 2020. On or about the 23rd February 2020, the first Respondent made a decision to refuse the Claimants' transfer applications.
3. The Claimants appealed to the second Respondent. By decision dated 11th March 2020 the second Respondent refused the Claimants' appeal and denied their application to transfer. It is highlighted that applications to transfer made at the same time by two cousins of the Claimants were allowed on appeal by the second Respondent. The distinction drawn by the second Respondent between the successful and unsuccessful applications was that the two successful applicants were able to show that they were parties to a lease which satisfied the residency requirements of the Kilkenny County Board. The three Claimants names did not appear on the lease presented as evidence of residency.
4. A further and final appeal was brought by the Claimants to the Third Respondent. Those appeals were denied by decision dated 2nd July 2020.

DISCUSSION

5. A quirk of this case was that an appeal was sought and was allowed to the third Respondent. Consequently, the Claimants were essentially allowed a second appeal. The Official Guide provides for one appeal only and the appeal to the Third Respondent ought not to have been facilitated. The Tribunal has discounted that strand of the transfer application and appeal process for the purposes of its discussions.

6. Several grounds of review were put forward by the Claimants but they eventually distilled to two key issues. Issue 1 related to the involvement of one member of the first Respondent committee when it considered and decided upon the transfer applications. Specifically, the first Respondent met on two separate occasions to consider this matter – once on the 20th February 2020 and again on the 23rd February 2020. Martin Gordon is a member of the first Respondent committee and, it seems to be accepted, has family ties to the John Lockes Club, albeit that he is not a member himself. Mr Gordon attended at the first of the two meetings convened by the first Respondent but was asked to withdraw from the second of the two meetings due to the possible perception of a conflict of interest on his part. The Claimants argued that, notwithstanding that a perception of a conflict of interest arose in respect of Mr Gordon, that he had nonetheless played a fundamental role in the decision (refusing the transfers) made by the first Respondent. The Claimants argue that Mr Gordon's involvement impugns the decision made.

7. Minutes provided by the first Respondent were somewhat confused in that they appear to be an amalgam of notes taken at the meeting of the 20th and the meeting of the 23rd. The minutes provided refer to a contribution made by Mr Gordon (it seems at the meeting on the 20th) and specifically to questions he asked of Windgap Club officials who were called to that meeting. The Claimants argued that the decision to exclude Mr Gordon from the meeting of the 23rd was in and of itself an acknowledgement of a potential conflict of

interest on Mr Gordon's part and that, therefore, any decision made or contributed to by Mr Gordon must be impugned.

8. The first Respondent for its part argued that Mr Gordon's conflict of interest was a matter which had only been highlighted in the time between the 20th and 23rd February meetings, that the Committee acted appropriately to exclude Mr Gordon from the final decision making process and that its decision was not tainted by any bias, or perception of bias, on the part of Mr Gordon.
9. The second key strand of the case made by the Claimants relates to the meaning of Rule 6.5(c) of the Official Guide. It reads

"The County Committee shall delegate consideration of Applications to the Competition Control Committee. If requested by any party involved, the Committee shall give the Applicant and the two clubs concerned the opportunity of attending a convened hearing to outline their respective positions on the application."

10. In this instance the first Respondent, at its own direction, invited members of the Windgap club to its meeting on the 20th. Invitations to attend that meeting were not extended to the Claimants or to the John Lockes club. The Claimants argued that once one of the three interested parties had been invited to attend before the first Respondent that Clause 6.5(c) demanded that each interested party be afforded the opportunity to so attend. No invitation to attend the meeting was extended to the Claimants by the first Respondent.
11. The first Respondent argues that the demands of section 6.5(c) only arise when a request to outline its position is made by any party involved. In this instance no such request came from either of the involved clubs or from the Claimants. Specifically it was highlighted that the Claimants had a specific right to ask to make submissions to the Committee and they failed to do so.

DECISION

12. The Tribunal acknowledges that the first Respondent was entirely well-intentioned in taking decisions to invite Windgap GAA club to make representations at its meeting on 20th February and also in its decision to exclude Mr Gordon from the meeting on 23rd February. It is clear that in asking Windgap representatives to attend before it the first Respondent sought to obtain what might be termed “non-partial” evidence of residence that it might not necessarily get from either the Claimants or from representatives of the John Lockes club. Also, very much to the credit of the first Respondent, it is clear that when the perception of a conflict of interest on the part of Mr Gordon was highlighted, the first Respondent immediately acted to exclude Mr Gordon from its meeting of 23rd February.
13. However, the Tribunal finds that the provisions of Rule 6.5(c) of the Official Guide anticipate the potential for unfairness if one side is heard by a decision-making body without then other interested parties being given a right of audience. The general principle of audi alteram partem also applies. In the circumstances, having invited Windgap GAA club to appear and give evidence before it, the Tribunal finds that the John Lockes Club and, most pertinently, the Claimants should have been afforded a similar right to make their case. The failure to extend an invitation to attend to the Claimants vitiates the decision made by the first Respondent.
14. The position with Mr Gordon is more delicate. Clearly the first Respondent identified that a potential for unfairness arose as a consequence of Mr Gordon’s involvement in the transfer application process and it took steps to ameliorate that risk by ensuring that Mr Gordon was absent from its second meeting on 23rd February. However, the minutes provided to the Tribunal by the first

Respondent indicate that Mr Gordon was centrally involved in questioning of Windgap representatives on the 20th and make it clear that Mr Gordon asked questions unfavourable to the Claimants' transfer application. The Tribunal was not satisfied that the first Respondent's deliberations on the 23rd are capable of being regarded as separate and distinct from the discussions which took place on the 20th and indeed the minutes provide, in terms of the final decision, that *"Having reflected & reviewed the minutes of the previous meeting it was decided unanimously that the CCC's decision would remain the same"*. The Tribunal finds that perception of bias caused by Mr Gordon's involvement in the process is also a basis to impugn the decision made by the first Respondent.

CONCLUSION AND DETERMINATION

15. That the decision of the first Respondent made on the 23rd February 2020 should be set aside. The decision of the second Respondent must necessarily be set aside too.
16. That the Claimant's transfer applications should be considered afresh by a separate division of the Kilkenny County Board's Competitions Control Committee.

COSTS AND EXPENSES

17. The Tribunal directs that the DRA's expenses be discharged by Kilkenny CCC. The Tribunal further directs that the deposit lodged by the Claimant be reimbursed by the Secretary.

Date of Oral Hearing: 6th August 2020

Date of Agreed Award: 3rd September 2020

By email agreement.

Aaron Shearer BL

Geraldine Fitzpatrick BL

Páraic Duffy